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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,247	01/22/2002	Mark Ellery Ogram	1475B.5A.4	9185

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

10/055,247

Applicant(s)

OGRAM, MARK ELLERY

Examiner

Dennis Ruhl

Art Unit

3629

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 14 October 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file a complete new brief in compliance with 37 CFR 41.37 within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

see attachment.

  
DENNIS RUHL  
PRIMARY EXAMINER

With respect to the "Summary of the Invention" section in the Appeal Brief, this is not the proper section heading. It must be labeled as "Summary of the claimed subject matter". Also, applicant has failed to provide a concise explanation of each independent claim. Independent claims 1,5,9,12 each must have their own concise explanation of the claimed subject matter. The summary applicant has provided is for the disclosed invention and not the claims. The listing of the claims does not constitute a concise explanation of the subject matter claimed by each independent claim and each dependent claim argued separately. The means plus function language from the claims has also not been addressed by identifying the means language in the claims and the structure, material, or acts described in the specification as corresponding to the means language (by specific reference and explanation as to page numbers, line numbers, and drawings). Applicant is reminded that each independent claim and each dependent claim being argued separately must have the means plus function language addressed as required by 41.37 (c).

The various sections required in the Brief are not in the proper order as is required by 37 CFR 41.37.

With respect to the "Status of the amendments" section, none of the provided information has anything to do with amendments filed subsequent to the Final rejection. This section is only for amendments filed after the final rejection, in this case there are none.

While not rendering the Appeal Brief defective, the section "ISSUES" is no longer a section that is supposed to be in an Appeal Brief as it has been replaced by the section "Grounds of rejection to be reviewed on appeal".

The examiner also notes that applicant has failed to mention the other pending cases that are related to this application that have had appeal briefs filed as of the date of this correspondence. While this does not render the brief defective the examiner wanted to point this fact out to applicant. The examiner will inform the board of the other related cases in the event applicant does not amend this section to reflect the other related pending cases that are also apparently going up on appeal.

The claims appendix must be labeled properly and cannot be called "Appendix 2". The headings set forth in 37 CFR 41.37 must be adhered to.



**VIS RUHL**  
**PRIMARY EXAMINER**